

ENTERED

September 12, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 4:16 cv 2720

**GOODMAN COMPANY, L.P.,
a Delaware corporation,**

Jury Demand

Defendant.

CONSENT DECREE OF CIVIL PENALTY AND PERMANENT INJUNCTION

Plaintiff, the United States of America, has commenced this action by filing a Complaint for Civil Penalties and Permanent Injunctive Relief pursuant to 15 U.S.C. §§ 2068(a)(4) and (a)(13), 2069, and 2071(a), against Goodman Company, L.P. ("Goodman"). Goodman has waived service of the summons and the complaint.

The parties have agreed to settlement of all allegations in the Complaint and consent to the entry of this Consent Decree of Civil Penalty and Permanent Injunction ("Decree").

Therefore, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. In its Complaint, the United States alleges that Goodman knowingly violated the Consumer Product Safety Act ("CPSA") by failing to immediately furnish to the Consumer Product Safety Commission ("CPSC" or "Commission") the information required by 15 U.S.C. § 2064(b) in violation of 15 U.S.C. §§ 2068(a)(4) and § 2069. The Complaint alleges that Goodman failed to timely report information it obtained which reasonably supported the conclusion that certain packaged terminal air conditioner/heat pumps – specifically, 3.5 kilowatt, 230/208 volt units, with 20-amp power cords, manufactured by Goodman between January 2007

and April 2008 (“Subject PTACs”) – (1) contained a defect which could create a substantial product hazard, and (2) created an unreasonable risk of serious injury or death.

2. The United States further alleges in the Complaint that Goodman knowingly violated the CPSA’s prohibition on making a material misrepresentation to an officer or employee of the CPSC in the course of an investigation under the CPSA in violation of 15 U.S.C. §§ 2068(a)(13) and 2069. The Complaint alleges that Goodman made misrepresentations to the CPSC by providing inaccurate information regarding the number of reports it had received of overheating, including reports of fire, potentially attributable to the Subject PTACs’ 20-amp power cord.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355(a) and 15 U.S.C. § 2071(a)(1).

4. Venue in this District is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a).

5. The Complaint states a claim upon which relief may be granted against Goodman under the CPSA. 15 U.S.C. §§ 2068(a)(4) and (13), 2069(a), 2071(a).

6. At all relevant times, Goodman was a “manufacturer,” as defined in 15 U.S.C. § 2052(a)(11), of the Subject PTACs.

7. Goodman enters into this Decree freely and without coercion. Goodman further acknowledges that it has read the provisions of this Decree and is prepared and able to abide by them.

8. The United States believes settlement of this case on the terms described below is in the public interest and that injunctive relief is necessary to prevent future violations of the CPSA.

9. Goodman does not admit that the law has been violated and believes settlement is appropriate to avoid the time and expense of litigation.

10. Goodman waives any claim that it may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date this Decree is entered by the Court. All parties agree to bear their own fees, costs, and attorneys' fees.

I. CIVIL PENALTY

A. Goodman shall pay five million, five hundred fifty thousand dollars (\$5,550,000.00) to the United States as a civil penalty, pursuant to 15 U.S.C. § 2069. Within fourteen calendar days after entry of this Decree, Goodman shall transfer the civil penalty payment in the form of an electronic fund transfer in accordance with the procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

B. In the event of any default in payment required in Paragraph A, the entire unpaid amount shall constitute a debt due and immediately owing by Goodman to the United States, and interest shall accrue and be paid by Goodman at the federal legal rate of interest set forth at 28 U.S.C. § 1961 from the date of default until the payment has been paid in full.

C. Goodman relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Goodman shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise.

D. The judgment amount set forth in this Section represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

E. Goodman agrees that it will not contest the facts as alleged in the Complaint filed

in this action, without further proof, in any subsequent civil litigation filed by or on behalf of the United States to enforce its rights to payment under this Section.

II. INJUNCTIVE RELIEF

A. Goodman shall ensure that its existing compliance program is designed to ensure compliance with the safety statutes and regulations enforced by the Commission and shall continue to implement and shall maintain a compliance program that, at a minimum, contains the following elements:

- i. written standards and policies;
- ii. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- iii. procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- iv. effective communication of company compliance-related policies and procedures to all employees through training programs or otherwise;
- v. senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission;
- vi. oversight of compliance by a Goodman governing body; and
- vii. retention of all records reasonably related to compliance with the safety statutes enforced by the CPSC for at least five (5) years and availability of such records to CPSC staff upon request.

B. Goodman shall maintain, enforce, and ensure that its existing controls include a

system of internal controls and procedures designed to ensure that:

- i. information required by law to be disclosed by Goodman to the CPSC is recorded, processed and reported in accordance with applicable law;
- ii. all reporting made to the CPSC is timely, truthful, complete, and accurate; and
- iii. prompt disclosure is made to Goodman's management of any material deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Goodman's ability to record, process, and report to the CPSC in accordance with applicable law.

C. Goodman shall provide to the CPSC written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls, upon request by the CPSC staff, subject to applicable privileges. Goodman shall cooperate fully and truthfully with CPSC staff and shall make available all information, materials, and personnel reasonably necessary for CPSC staff to evaluate Goodman's compliance with the terms of the Decree, and with provision for maintaining the confidentiality of confidential information in accordance with 15 U.S.C. § 2055.

III. MISCELLANEOUS PROVISIONS

A. This Decree shall be binding on the successors and assigns of Goodman, and any such successors and assigns shall be subject to the terms of this Decree.

B. For a period of five years from the entry of this Decree by the Court, Goodman shall notify the CPSC General Counsel in writing within thirty (30) calendar days after any reorganization, consolidation, merger, acquisition, dissolution, assignment, sale, transfer or

similar transaction or series of transactions resulting in a successor entity, the transfer or disposition of substantially all of the assets of Goodman or any other changes in corporate structure that may affect compliance obligations arising out of this Decree.

C. Goodman shall notify the CPSC General Counsel in writing within fourteen (14) calendar days after any change in the person to which communications from the CPSC should be addressed.

D. If, at any time after entry of this Decree, Goodman fails to comply with any provisions of this Decree, Goodman shall pay to the United States liquidated damages in the sum of one thousand dollars (\$1,000) per violation for each day that Goodman fails to comply with the Decree. Goodman understands and agrees that the liquidated damages specified in this paragraph are not punitive in nature and that they do not in any way limit the ability of the United States to seek, and the Court to impose, additional criminal or civil contempt penalties based on conduct that may also be the basis for the payment of liquidated damages.

E. The provisions of this Decree are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

F. This Court retains jurisdiction of this matter for the purpose of enabling any of the parties to this Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the enforcement of compliance therewith, or for the punishment of violations thereof.

G. The United States shall be reimbursed by Goodman for reasonable costs and attorneys' fees upon succeeding in a suit to enforce this Decree.

H. The parties, by their respective counsel, hereby consent to entry of the foregoing

Decree, which shall constitute a final judgment and Order in this matter. The parties further stipulate and agree that the entry of the foregoing Decree shall constitute full, complete, and final settlement of this action.

SO ORDERED, this 12th day of September, 2016.



HON. Sim Lake
U.S. DISTRICT COURT JUDGE

ENTRY CONSENT TO:

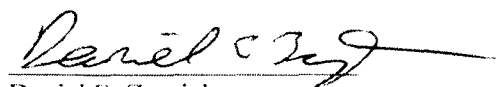
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